UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, STATE OF WASHINGTON, PUYALLUP TRIBE OF INDIANS, and MUCKLESHOOT INDIAN TRIBE,	)	
Plaintiffs,	)	No.
v.	)	
MURRAY PACIFIC CORPORATION, a Washington Corporation, PAN PACIFIC TRADING CORPORATION, a dissolved Washington Corporation whose successor is Murray Pacific Corporation, BOARDMAN BROWN, and MARY JANE ANDERSON,	)	COMPLAINT
Defendants.	)	

Plaintiffs United States of America, by authority of the Attorney General, on behalf of the National Oceanic and Atmospheric Administration of the Department of Commerce and the Department of the Interior; State of Washington through the Washington Department of Ecology;

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

Puyallup Tribe of Indians; and Muckleshoot Indian Tribe, allege as follows:

I. GENERAL ALLEGATIONS

1. This is a civil action under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a); section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; section 1002(b) of the Oil Pollution Act (OPA), 33 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70.105D, for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances and discharges of oil into Commencement Bay in Tacoma, Washington.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this case pursuant to sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); section 311(n) of the CWA, 33 U.S.C. § 1321(n); section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331, 1345 and 1367(a).

3. Venue is proper in this district pursuant to section 113(b) of CERCLA, 42 U.S.C. § 9613(b); section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b) and (c).

III. THE SITE

4. Commencement Bay is an embayment in southern Puget Sound located in and adjacent to Tacoma, Washington.

5. The "Commencement Bay Environment" as used in this Complaint means the waters of Commencement Bay, including the shoreline, intertidal areas, tributaries, drainage areas, estuaries and bottom sediments, lying south of a line drawn from Point Defiance to Dash Point, and including the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St. Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee Waterway, Sitcum Waterway, Blair Waterway and Hylebos Waterway. This area includes but is not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended by the U.S. Environmental Protection Agency, and areas affected by releases of hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.

6. Commencement Bay is contaminated with a variety of hazardous substances,

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

including antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate, hexachlorobenzine, hexachlorobutadiene, polycyclic aromatic hydrocarbons and polychlorinated biphenyls (PCBs).

7. The Hylebos Waterway and Commencement Bay are navigable waters within the meaning of section 1001(21) of OPA, 33 U.S.C. § 2701(21), and section 502(7) of the CWA, 33 U.S.C. § 1362(7).

IV. PLAINTIFFS

8. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), and 40 C.F.R. § 300.600, the United States is trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

9. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of OPA, 33 U.S.C. § 2706, section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. § 300.605, Ch. 43.21A RCW, Ch. 70.105D RCW, and Ch. 90.48 RCW, the State of Washington is trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

10. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Puyallup Tribe of Indians is trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay Environment

11. Pursuant to section 107(f) of CERCLA, 42 U.S.C. § 9607(f), section 1006 of OPA, 33 U.S.C. § 2706, and 40 C.F.R. § 300.610, the Muckleshoot Indian Tribe is trustee for certain natural resources in the Hylebos Waterway and the Commencement Bay Environment.

V. DEFENDANTS

12. Defendant Murray Pacific Corporation is a corporation organized under the laws of the State of Washington.

13. Murray Pacific Corporation does business in this district.

14. Pan Pacific Corporation is a dissolved corporation, organized under the laws of

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

Washington, whose successor in interest is Murray Pacific Corporation.

15. At times relevant to this Complaint, Pan Pacific Corporation did business in this district.

16. Boardman Brown is a resident of Pasadena, California.

17. Mary Jane Anderson is a resident of Seattle, Washington.

18. Defendants Pan Pacific Corporation and Murray Pacific Corporation owned or operated a log yard on the Hylebos Waterway within the Commencement Bay Environment.

19. Defendants Boardman Brown and Mary Jane Anderson owned property as tenants in common on or near the Hylebos Waterway which they leased to Murray Pacific Corporation for operations at the log yard.

20. During the time that Pan Pacific Corporation and Murray Pacific owned or operated the log yard, there were discharges and releases of hazardous substances at the yard into the Hylebos Waterway and the Commencement Bay Environment.

21. During the time that Pan Pacific Corporation and Murray Pacific owned or operated the log yard, there were discharges of oil at the yard into the Hylebos Waterway and the Commencement Bay Environment.

22. There were discharges and releases of hazardous substances into the Hylebos Waterway and the Commencement Bay Environment at the property leased by Boardman Brown and Mary Jane Anderson to Murray Pacific Corporation.

23. There were discharges of oil into the Hylebos Waterway at the property leased by Boardman Brown and Mary Jane Anderson to Murray Pacific Corporation.

VII. FIRST CLAIM FOR RELIEF

24. Plaintiffs reallege paragraphs 1 through 23.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part, as follows:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -
>
> (1) the owner and operator of a vessel or a facility,

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for
>
> * * *
>
> (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;
>
> * * *

26. Materials disposed of and released in the Commencement Bay Environment by defendants include hazardous substances within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

27. The log yard owned and operated by Murray Pacific Corporation and Pan Pacific Corporation is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

28. The Commencement Bay Environment is a facility within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. Releases or threatened releases of hazardous substances have occurred in the Commencement Bay Environment within the meaning of sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). The releases of hazardous substances in the Commencement Bay Environment at facilities owned or operated by defendants have resulted in injury to, destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

30. Defendants are persons within the meaning of section 107 of CERCLA, 42 U.S.C. § 9607.

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

31. Defendant Murray Pacific Corporation is a successor to defendant Pan Pacific Corporation and is responsible for the liability of Pan Pacific Corporation under CERCLA.

32. Defendants are liable to Plaintiffs for natural resource damages resulting from releases of hazardous substances pursuant to section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

VIII. SECOND CLAIM FOR RELIEF

33. Plaintiffs reallege paragraphs 1 through 32.

34. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent part, as follows:

> Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

35. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), provides in pertinent part, as follows:

> Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian Tribe trustee, or a foreign trustee.

36. The log yard owned or operated by Murray Pacific Corporation and Pan Pacific Corporation is a facility within the meaning of sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

37. Defendants are responsible parties within the meaning of section 1001(32) of OPA, 33 U.S.C. § 2701(32).

38. The discharge of oil into the Hylebos Waterway or adjoining shorelines at facilities owned or operated by defendants has resulted in injury to, destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

39. Defendants are liable to Plaintiffs for natural resource damages resulting from discharges of oil pursuant to section 1001 of OPA, 33 U.S.C. § 2701.

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

IX. THIRD CLAIM FOR RELIEF

40. Plaintiffs reallege paragraphs 1 through 39.

41. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in pertinent part, as follows:

> The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone . . . or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited . . . .

42. Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), provides in pertinent part, as follows:

> Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United State Government, or (D) an act or omission of a third party without regard to whether an such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government . . . .

43. Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), provides in pertinent part, as follows:

> The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

44. The log yard owned or operated by Murray Pacific Corporation and Pan Pacific Corporation is an onshore facility within the meaning of sections 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

45. There have been discharges of oil or hazardous substances in harmful quantities into the Hylebos Waterway and adjoining shorelines from the log yard owned or operated by defendants.

46. Discharges of oil or hazardous substances from the log yard into the Hylebos

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

Waterway or adjoining shorelines have affected, damaged or destroyed natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

47. Defendants are liable to the United States and State of Washington for natural resource damages resulting from discharges of oil or hazardous substances into the Hylebos Waterway or adjoining shorelines pursuant to section 311(f) of the CWA, 33 U.S.C. § 1321(f).

X. FOURTH CLAIM FOR RELIEF

48. Plaintiffs reallege paragraphs 1 through 47.

49. MTCA, Chapter 70.105D.040 RCW, provides in pertinent part as follows:

> (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:
>
> (a) The owner or operator of the facility;
>
> (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;
>
> (c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;
>
> (d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment or other facility selected by such person, from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and
>
> (e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.
>
> (2) Each person who is liable under this section is strictly liable, jointly and severally, for . . . all natural resource damages resulting from the releases or threatened releases of hazardous substances.

50. Materials disposed of and released in the Commencement Bay Environment by defendants include hazardous substances within the meaning of Chapter 70.105D.020(6)(c) RCW.

51. The log yard owned and operated by Murray Pacific Corporation and Pan Pacific Corporation is a facility within the meaning of Chapter 70.105D.020(4).

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

52. The Commencement Bay Environment is a facility within the meaning of Chapter 70.105D.020(4).

53. Releases or threatened releases of hazardous substances have occurred in the Commencement Bay Environment within the meaning of Chapter 70.105D.020 and Chapter 70.105D.040.

54. The natural resources that have been and continue to be injured, destroyed, or lost by the release of hazardous substances by Defendants include fish, shellfish, invertebrates, birds, marine sediments, and other such natural resources.

55. The State of Washington has incurred and continues to incur response costs related to the assessment of injury to natural resources caused by the releases of hazardous substances by Defendant.

56. Pursuant to Rev. Code Wash. Chapter 70.105D.040(2), Defendants are jointly and severally liable to the State of Washington for all damages to natural resources in the Commencement Bay Environment, resulting from the release of hazardous substances at or from Defendants' facilities.

XI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment against Defendants:

(1) For damages for injury to natural resources resulting from the discharges or releases of hazardous substances in the Hylebos Waterway and Commencement Bay Environment, including the cost of assessing such damages; and

(2) Awarding Plaintiffs such other and further relief as this Court may deem appropriate.

Dated:

U.S. Department of Justice
NOAA GC-DOJ DARC
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
(206) 526-6616

UNITED STATES OF AMERICA

KELLY A. JOHNSON
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

JOHN McKAY
United States Attorney
Western District of Washington

JAMES L. NICOLL
U.S. Department of Justice
Environmental Enforcement Section
NOAA GC-DOJ DARC
7600 Sand Point Way NE
Seattle, Washington 98115
(206) 526-6616
james.nicoll@usdoj.gov
efile_seattle.enrd@usdoj.gov